

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WASHINGTON

3 EMILIO URIBE,

4 Plaintiff,

5 vs.
6

7 COMMISSIONER OF SOCIAL
8 SECURITY,

9 Defendant.

No. 1:16-CV-03105-FVS

REPORT AND
RECOMMENDATION TO GRANT
STIPULATED ORDER FOR
REMAND

ECF Nos. 14, 22

10 The parties filed a Stipulated Motion for Remand pursuant to sentence four
11 of 42 U.S.C. §405(g). ECF No. 22. This matter has been referred to the
12 undersigned magistrate judge for issuance of a report and recommendation. ECF
13 No. 23.

14 After consideration, IT IS RECOMMENDED that the Stipulated Motion for
15 Remand (ECF No. 22) be GRANTED. The Commissioner's final decision should
16 be reversed and remanded for further proceedings pursuant to sentence four of 42
17 U.S.C. §405(g). Upon remand to the Commissioner of Social Security, the
18 Appeals Council should remand this case to the Administrative Law Judge (ALJ)
19 for a de novo hearing and a new decision. On remand, the ALJ will further

1 evaluate the medical evidence, including but not limited to the medical opinions;
2 further evaluate the credibility of Plaintiff's subjective complaints; further evaluate
3 Plaintiff's residual functional capacity; and allow Plaintiff to testify and present
4 evidence. If necessary, the ALJ will obtain additional vocational expert testimony,
5 and take further action to complete the administrative record.

6 The parties stipulate that this case be reversed and remanded to the ALJ on
7 the above grounds pursuant to sentence four of 42 U.S.C. § 405(g). Therefore, the
8 matter should be remanded to the Commissioner for additional proceedings
9 pursuant to sentence four 42 U.S.C. 405(g). Upon proper presentation, this Court
10 will consider Plaintiff's application for costs and attorney's fees under 28 U.S.C. §
11 2412(d).

12 It is further RECOMMENDED that Plaintiff's Motion for Summary
13 Judgment (ECF No. 14) be DENIED as moot, given the parties motion for remand.

14 **OBJECTIONS**

15 Any party may object to a magistrate judge's proposed findings,
16 recommendations or report within **fourteen (14)** days following service with a
17 copy thereof. Such party shall file written objections with the Clerk of the Court
18 and serve objections on all parties, specifically identifying the portions to which
19 objection is being made, and the basis therefor. Any response to the objection
shall be filed within **fourteen (14)** days after receipt of the objection. Attention is

1 directed to FED. R. CIV. P. 6(d), which adds additional time after certain kinds of
2 service.

3 A district judge will make a *de novo* determination of those portions to
4 which objection is made and may accept, reject or modify the magistrate judge's
5 determination. The judge need not conduct a new hearing or hear arguments and
6 may consider the magistrate judge's record and make an independent
7 determination thereon. The judge may, but is not required to, accept or consider
8 additional evidence, or may recommit the matter to the magistrate judge with
9 instructions. *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000); 28 U.S.C.
10 § 636(b)(1)(B) and (C), Fed. R. Civ. P. 72; LMR 4, Local Rules for the Eastern
11 District of Washington.

12 A magistrate judge's recommendation cannot be appealed to a court of
13 appeals; only the district judge's order or judgment can be appealed.

14 The District Court Executive is directed to enter this Report and
15 Recommendation, forward a copy to Plaintiff and counsel, and **SET A CASE**
16 **MANAGEMENT DEADLINE ACCORDINGLY.**

17 DATED April 17, 2017.

18 s/Mary K. Dimke
19 MARY K. DIMKE
UNITED STATES MAGISTRATE JUDGE